

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 06-0153P**  
**Sales Tax**  
**For the Years 2002-2004**

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**ISSUE**

**I. Tax Administration- Ten Per Cent Negligence Penalty**

**Authority:** IC § 6-8.1-10-2.1, 45 IAC 15-11-2(b).

The taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is in the business of providing water services. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, interest, and penalty for the tax period 2002-2004. The taxpayer protested the imposition of the ten percent negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this Letter of Findings is based on the information in the file.

**I. Tax Administration- Ten Percent Negligence Penalty**

**DISCUSSION**

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts

and circumstances of each taxpayer.

During the period of the audit, the taxpayer ignored the law and departmental instructions for the payment of Indiana sales taxes. The taxpayer did not maintain adequate documentation on its exempt customers. Also, it did not report and remit the sales taxes paid by a major commercial customer. These breaches of the taxpayer's duty constitute negligence.

### **FINDING**

The taxpayer's protest is denied.

KMA/JMM/DK/06/13/06